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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,611	10/16/2001	Nasreen Quibria	57622-049 (ELZK-9)	5118
7590	07/15/2004		EXAMINER	
Toby H. Kusmer McDermott, Will & Emery 28 State Street Boston, MA 02109			SKED, MATTHEW J	
			ART UNIT	PAPER NUMBER
			2655	

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/978,611	QUIBRIA ET AL.	

<b>Examiner</b>	<b>Art Unit</b>	
Matthew J Sked	2655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**BEST AVAILABLE COPY**

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 1/31/02 - 3/26/02
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title includes the phrase "adaptive respondent training" but the neither the specification nor the claims give any indication that training is present.
2. The disclosure is objected to because of the following informalities: The summary is simply a recitation of the claims. A summary should present, according to patent rule §1.73, "a brief summary of the invention indicating its nature and substance, which may include a statement of the object of the invention....".

Appropriate correction is required.

3. Claim 3 is objected to because of the following informalities: the phrase "capable of competing" on line 27 should read --capable of completing--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Art Unit: 2655

5. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lieben et al. (U.S. Pat 5,982,875) in view of Zirngibl et al. (U.S. Pat 6,606,596).

6. As per claims 1 and 3, Lieben teaches a telephonic system comprising: presenting the respondent with an introductory prompt (1-tone beep, Figure 2); determine capability of the user from audio responses (command word "HELP", col. 4, lines 49-55); and an explanation of operation of the application (menu choices, col. 6, lines 37-46).

Lieben does not teach the system making telephonic contact with the respondent.

Zirngibl teaches an interactive telephonic system that includes the system making telephonic contact with the respondent (telecast through a call server, col. 8, lines 24-30).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the system of Lieben to include the system making telephonic contact with the respondent because it allows the system to deliver information to and interact with the user with the user initiating the interaction.

7. As per claim 2, Lieben teaches the explanation to include a prompt (menu choices, col. 6, lines 37-46).

However, neither Lieben nor Zirngibl teach also having instructions on responding to the prompt.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the system of Lieben and Zirngibl to include instructions on

responding to the prompt because it would help the user identify the correct selection to make from the prompt.

***Conclusion***

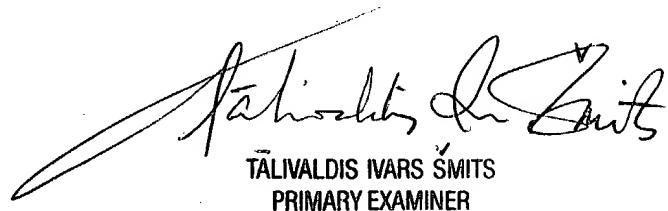
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McAllister et al. (U.S. Pat 6,385,584) and Kopp et al. (U.S. Pat 5,420,912) teach a system for hands free telephony that gives help to the user. Holthouse et al. (U.S. Pat 6,606,598) and Philips et al. (U.S. Pat 6,405,170) both teach methods for testing the behavior of speech recognition applications based on user responses. Bernstein (U.S. Pat 6,157,913) teaches determining the aptitude of the user from prompts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Sked whose telephone number is (703) 305-8663. The examiner can normally be reached on Mon-Fri (8:00 am - 4:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Talivaldis Smits can be reached on (703) 306-3011. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MS  
07/02/04



TALIVALDIS IVARS SMITS  
PRIMARY EXAMINER